

IC 36-9-29.1

Chapter 29.1. Flood Control District in Marion County

IC 36-9-29.1-1

Application of chapter

Sec. 1. This chapter applies to each county having a consolidated city.

As added by Acts 1982, P.L.77, SEC.24.

IC 36-9-29.1-2

"Board"

Sec. 2. As used in this chapter, "board" refers to the board of public works of the consolidated city, subject to IC 36-3-4-23.

As added by Acts 1982, P.L.77, SEC.24.

IC 36-9-29.1-3

Special taxing district

Sec. 3. The flood control district referred to in IC 36-3-1-6 constitutes a special taxing district for the purpose of protecting the county and its residents from floods and flood hazards.

As added by Acts 1982, P.L.77, SEC.24.

IC 36-9-29.1-4

Powers and duties of board

Sec. 4. (a) To carry out this chapter, the board has jurisdiction to authorize projects of flood control and prevention over all watercourses, and property affected by these projects, within the flood control district and in or along any watercourse in any adjacent county that is a tributary to any watercourse in the district.

(b) In carrying out such a project, the board has the following powers:

(1) To construct and maintain levees, dikes, retaining walls, dams, reservoirs, drains, and all other improvements in or along any watercourse designed to prevent damage and injury through floods and to conserve water resources.

(2) To provide for the disposal of excess water from any reservoir on such terms as the board considers best, so long as this does not impair the function of flood prevention provided by the improvements.

(3) To construct, reconstruct, repair, relocate, widen, or resurface any public way connected with such a project.

(4) To remove obstructions in, to dredge or control, to straighten, or to change the channel of any watercourse.

(5) To reconstruct any new public structure, or any new public bridge or bridges; or to alter, relocate, remove or require the removal of, repair, lengthen, widen, or reconstruct any public structure, or any public bridge or bridges, designed or used for vehicular or pedestrian traffic, and already built and located, whether originally built by a municipal corporation or any other person, across any watercourse.

(6) To regulate and establish channel, bank, and harbor lines on watercourses; to remove or to require to be removed any obstruction or encroachment in, beneath, above, along, or beyond channel, bank, and harbor lines; and to prevent any future obstructions or encroachments beyond these lines by dumping or filling with any material or in any other manner.

(7) To regulate the manner in which all sewers, drains, conduits, viaducts, aqueducts, cables, power lines, and pipelines of any description crossing the bed of any watercourse, or along its banks, or carried across, over, or under it on any bridge, trestle, support, or other structure, shall be located or relocated, replaced, altered, repaired, constructed, reconstructed, lengthened, widened, or removed, whether already constructed or proposed to be constructed or reconstructed by a municipal corporation or any other person.

(8) To regulate the general manner of construction of all temporary or permanent bridges, dikes, moorings, landings, dams, and spillways over, along, or in any watercourses proposed to be constructed or reconstructed by a municipal corporation or any other person.

(9) To regulate the removal by any persons of sand and gravel from watercourses and to establish the distance from bridges and other structures crossing them, and also the uniform grade lines to which sand and gravel may be excavated by any persons.

(10) To regulate the depth, waterway, height, alignment, location, and general manner of construction, reconstruction, and repair of any railroad bridge and of any person crossing over any watercourses or affected by carrying out of projects.

(11) To regulate the general manner of locating, relocating, constructing, reconstructing, altering, repairing, lengthening, widening, raising, and aligning any private bridge, including all its piers, abutments, and supports.

(12) To regulate and order that any of the matters described in this subsection shall be done by the person owning or controlling them, in carrying out projects, all subject to supervision and approval by the board.

(13) To cooperate with any department or agency of the federal government, and with any department or agency of the state, that is established for the purpose of developing a comprehensive plan or program for the protection of life and property from floods or flood hazards.

(c) A project for flood control may not be carried out until it is submitted to and approved by the department of natural resources of the state.

As added by Acts 1982, P.L.77, SEC.24.

IC 36-9-29.1-5

Adoption of resolution

Sec. 5. Whenever the board determines that it is necessary for the general welfare, safety, or security of the flood control district to undertake and carry out any project to protect the district and its

residents from floods or flood hazards, the board shall adopt a resolution declaring this necessity and its purpose to proceed with the project.

As added by Acts 1982, P.L.77, SEC.24.

IC 36-9-29.1-6

Adoption of general plans and specifications

Sec. 6. (a) The board, as a part of the resolution, shall adopt the general plans then proposed for the entire project, including a plat showing the general scope of it and the location and bounds of all real property then considered necessary to be acquired or removed, or that would be injuriously affected, in connection with the project. It shall also determine the estimated cost of all the work, including the estimated damages to be awarded to the owners of the real and personal property. An appraisal is not required for those estimates.

(b) The adoption or filing of any specifications covering all or parts of the project and details of other matters is optional with the board, and it may also receive and file alternate plans and specifications, submitted by any person for all or any parts of the project. The board may, at the final hearing, adopt all or any of these materials in place of the board's plans and specifications.

As added by Acts 1982, P.L.77, SEC.24. Amended by P.L.27-1986, SEC.6.

IC 36-9-29.1-7

Filing and notice; resolution, plans, and specifications

Sec. 7. (a) The resolutions and plans, plat, descriptions, and estimates and specifications, if any, shall be filed and opened to inspection by the public at the board's office.

(b) The board shall then give notice in accordance with IC 5-3-1 of the adoption and general purport of the resolution and of the fact that the resolution, plans, plat, descriptions, and estimates and specifications, if any, have been prepared, are on file in the office of the board, and can be inspected. The notice must name a date on which the board will receive and hear objections from any person interested in or who will be affected by the resolution.

As added by Acts 1982, P.L.77, SEC.24.

IC 36-9-29.1-8

Hearing and final decision concerning project

Sec. 8. (a) At or before the time fixed for the hearing, any person interested in or who will be affected by the proposed project may file with the board a written remonstrance against the proposed project, in whole or in part.

(b) At the hearing, which may be adjourned from time to time, the board shall hear all persons who are interested in the proceedings and shall finally determine whether or not the proposed project, in whole or in part, is necessary for the general welfare, safety, and security of the flood control district, in order to provide flood prevention and control. The board may then confirm, modify and confirm as modified, or rescind the resolution.

(c) The final decision shall be entered in the records of the board and is final, binding, and conclusive upon all persons.

As added by Acts 1982, P.L.77, SEC.24.

IC 36-9-29.1-9

Special tax on property within flood control district

Sec. 9. Upon final action of the board confirming the resolution in its original or any modified form, all property, real and personal, located within the flood control district is subject to a special tax for the purpose of providing money to pay the total cost of the construction of the project or projects, and of acquiring all necessary lands or rights-of-way, as described and provided in the resolution, including all necessary incidental expenses. This special tax is declared to constitute the amount of benefits resulting to all the property from the proceedings and shall be levied as provided in this chapter.

As added by Acts 1982, P.L.77, SEC.24.

IC 36-9-29.1-10

Condemnation proceedings

Sec. 10. If the board has finally confirmed any resolution for all or any part of any project of flood prevention and control, and any property is required to be condemned, appropriated, or purchased, or is damaged or injuriously affected by the carrying out of the flood prevention project and work, the board shall proceed with reference to this property and awards of damages in all respects, whenever necessary, in accordance with IC 32-24. Any part of the appropriation proceedings as to any property may be included in either the original resolution or any subsequent resolutions.

As added by Acts 1982, P.L.77, SEC.24. Amended by P.L.2-2002, SEC.126.

IC 36-9-29.1-11

Award of contract for project

Sec. 11. If the board finally confirms the resolution, it shall then proceed to award a contract for the project in accordance with IC 36-1-12.

As added by Acts 1982, P.L.77, SEC.24.

IC 36-9-29.1-12

Flood control district bonds

Sec. 12. (a) For the purpose of raising money to pay for the property and the construction, and in anticipation of the special tax to be levied as provided in section 14 of this chapter, the board may cause to be issued, in the name of the consolidated city, the bonds of the flood control district, not to exceed the amount of the estimated total cost of all lands, rights-of-way, and other property so to be acquired and the estimated cost of all work or construction as provided for in the resolution, and including all expenses necessarily incurred in connection with the proceedings, together with a sum sufficient to pay the cost of supervision and inspection during the period of construction of the work.

(b) The expenses to be covered in the amount of the bond issue must include all expenses of every kind actually incurred preliminary to the acquiring of the property and the construction of the work, such as the cost of necessary records, engineering expenses, publication of notices, salaries, and other expenses necessary to be incurred before and in connection with the acquiring of the property, the amending of the contract, and the sale of bonds.

(c) In case different parcels of land are to be acquired, or more than one (1) contract for work is amended, at approximately the same time, whether under one (1) or more resolutions, the board may provide for the estimated total cost of these items in one (1) issue of bonds.

(d) The bonds shall be issued in accordance with IC 36-3-5-8.

(e) The bonds are negotiable instruments and bear interest payable semiannually, on the first days of January and July of each year, with the first interest to be payable on July 1 preceding the maturity of the first series of the bonds.

(f) On adopting a resolution ordering the bonds, the board shall certify a copy of it to the fiscal officer of the consolidated city, who shall prepare the bonds. The bonds shall be executed by the city executive and attested by the fiscal officer.

(g) The bonds are exempt from taxation as provided by IC 6-8-5.

(h) All bonds issued by the board shall be sold by the city fiscal officer in accordance with IC 5-1-11.

(i) Bonds of the flood control district payable by special taxation may not be issued when the total issue for that purpose, including the bonds already issued and to be issued, exceeds two percent (2%) of the adjusted value of the taxable property within the district as determined under IC 36-1-15. All bonds or obligations issued in violation of this subsection are void.

(j) The bonds are not, in any respect, a corporate obligation or indebtedness of the consolidated city, but constitute an indebtedness of the flood control district as a special taxing district, and the bonds and interest on them are payable only out of a special tax levy upon all the property of the district. The bonds must recite these terms upon their face, together with the purpose for which they are issued.

(k) An action to question the validity of any bonds issued for the flood control district or to prevent their issue must be brought before the date set for the sale of the bonds, and all bonds, from and after that date, are incontestable for any reason.

As added by Acts 1982, P.L.77, SEC.24. Amended by P.L.27-1986, SEC.7; P.L.6-1997, SEC.228.

IC 36-9-29.1-13

Fund for deposit of bond proceeds

Sec. 13. (a) All proceeds from the sale of bonds under section 12 of this chapter shall be kept as a separate and specific fund, to pay the cost of land, rights-of-way, and other property acquired and of construction of the work under the resolution, and all costs and expenses incurred in connection with these things, and no part of the proceeds may be used for any other purpose.

(b) The fund shall be deposited at interest with the depository or

depositories of other public funds in the consolidated city, and all interest collected on it belongs to the fund.

(c) Any surplus remaining out of the proceeds of the bonds, after all of the costs and expenses are fully paid, shall be paid into and becomes a part of the flood control district bond fund.

As added by Acts 1982, P.L.77, SEC.24.

IC 36-9-29.1-14

Tax levy; flood control district bond fund

Sec. 14. (a) For the purpose of raising money to pay all bonds issued under section 12 of this chapter and the interest on them, the city-county legislative body shall levy each year a special tax upon all the property of the flood control district, in such manner as to meet and pay the principal of the bonds as they severally mature, together with all accruing interest. The tax so levied each year shall be certified to the fiscal officers of the consolidated city and the county before August 2 in each year.

(b) The tax levied and certified shall be estimated and entered upon the tax duplicate by the county auditor, and shall be collected and enforced by the county treasurer, in the same manner as state and county taxes are estimated, entered, collected, and enforced. As the tax is collected by the county treasurer, it shall be accumulated and kept in a separate fund to be known as the "flood control district bond fund," and shall be applied to the payment of the flood control district bonds and interest as they severally mature and to no other purpose. All accumulations before their use for the payment of bonds and interest shall be deposited, at interest, with the depository or depositories of other funds in the consolidated city, and all interest collected on them belongs to the fund.

As added by Acts 1982, P.L.77, SEC.24.

IC 36-9-29.1-15

Additional tax levy; flood control maintenance and general expense fund; temporary loans; insufficient funds

Sec. 15. (a) For the purpose of:

- (1) providing for the payment of all general expenses of the board, including salaries of officers and employees and other items of expense not properly chargeable into the cost of any property acquired or work done under any resolution of the board for which flood control district bonds are issued; and
- (2) providing for the operation, maintenance, and repair of any levees, dikes, retaining walls, reservoirs, drains, and other works and improvements in or along any watercourse designed to prevent damage and injury through floods, and other permanent works constructed, including the repair and maintenance of equipment or the performance of any duty imposed by this chapter;

a tax of not exceeding one and thirty-three hundredths cents (\$0.0133) on each one hundred dollars (\$100) of taxable property in the district as it appears on the tax duplicates, in addition to all other taxes, shall be levied annually by the city-county legislative body for flood control

purposes. The county auditor shall estimate the taxes and enter them upon the tax duplicate, and the county treasurer shall collect and enforce the taxes, in the same manner as state and county taxes are estimated, entered, collected, and enforced.

(b) The county treasurer shall, between the first and tenth days of each month, notify the board of the amount of such taxes collected for flood control purposes during the preceding month, and upon the date of notification the county treasurer shall credit an account to be known as the "flood control maintenance and general expense fund" with such amount of taxes for flood control purposes as may have been collected at that time. The fund shall be used and expended only for the purposes prescribed by this chapter. The board may expend on behalf of the district all sums of money thus realized. Warrants for these expenditures shall be drawn by the fiscal officer of the consolidated city upon the vouchers of the board.

(c) The board may by resolution authorize and make temporary loans in anticipation of revenues actually levied under this section, which loans mature and shall be paid within one (1) year from the date of the making of the loan, with interest payable at the maturity of the loan. The warrants or other evidence of these loans shall be sold for not less than par, and before the making of the loan, notice of the time, place, amount, and terms of making of the loan shall be given by publication in accordance with IC 5-3-1. The warrants import no personal obligation for their payment and are payable only out of the tax so levied.

(d) All money remaining in any of the funds to the credit of the board at the end of the calendar year continues to belong to these funds respectively, to be used by the board for the respective purposes for which the funds are created. All funds raised under this section shall be deposited at interest with the depository or depositories of other public funds of the consolidated city, and all interest collected on them belongs to them.

(e) In the event that the revenues in the "flood control maintenance and general expense fund" of the district are at any time insufficient, the consolidated city may appropriate money out of its general fund for the use and benefit of the district, which amount so appropriated and used shall be returned and repaid to the city out of the first available funds by the board.

As added by Acts 1982, P.L.77, SEC.24. Amended by P.L.6-1997, SEC.229.

IC 36-9-29.1-16

Payments for property or work; damages assessed; title vested in consolidated city

Sec. 16. (a) From the separate and specific fund derived from sale of the bonds as provided in this chapter, and from no other source, the board shall pay to the parties entitled to it the amounts respectively due them for any lands, rights-of-way, or other property taken or purchased, or for work done by contract or otherwise.

(b) In case the lands, rights-of-way, or other property is secured by purchase or contract, the payment shall be made according to the terms

of the contract. In case of any such property taken by condemnation as provided in this chapter, the amount of damages assessed shall be paid or tendered as provided in this chapter, within ninety (90) days after the final determination of the condemnation proceedings, or as soon after that as the fund arising from the bonds is available. The title to the lands, rights-of-way, or other property, or that part so paid for or otherwise acquired then becomes vested in the consolidated city, in the manner, to the extent, for the purpose, and subject to the limitations provided in this chapter.

(c) The board shall order payments from the fund to be made to contractors in accordance with IC 36-1-12.

As added by Acts 1982, P.L.77, SEC.24.

IC 36-9-29.1-17

Filing and recording; description of land and statement of purpose

Sec. 17. Within sixty (60) days after any land or right in it is paid for and acquired under this chapter, the board shall file and cause to be recorded in the recorder's office of the county in which the land is situated, a description sufficiently accurate for its identification, with a statement of the purpose for which it is acquired or taken, which shall be signed by a majority of the board.

As added by Acts 1982, P.L.77, SEC.24.

IC 36-9-29.1-18

Expending funds raised under chapter; appropriation

Sec. 18. No part of any of the funds raised under this chapter may be expended except upon warrants drawn by the fiscal officer of the consolidated city, upon vouchers of the board. No appropriation in any form is necessary, but all funds arising under this chapter are considered appropriated to the respective purposes named in this chapter, and are under the control of the board, which has complete and exclusive authority to expend these funds for these purposes.

As added by Acts 1982, P.L.77, SEC.24.